IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1802 OF 2004

M/s. Puranik Builders..... .. Petitioner.

Versus

Pandurang Ganpat Madhvi & Ors.... Respondents.

Mr. N. P. Shimpi for the Petitioner.

None for Respondents.

CORAM : S. A. BOBDE, J.

DATED : FEBRUARY 18, 2005.

P.C.:

This writ petition is preferred by the original defendant against the order dated 28th November, 2003 passed by the IIIrd Addl. District Judge, Thane in M. C. A. No. 128 of 2002. By the impugned order in appeal, the learned Appellate Court has dismissed the petitioner's appeal against an injunction granted by the trial court.

2. The respondents filed a suit claiming an injunction against the petitioner from encroaching on their land and making a construction thereon. After one round of litigation, it was noticed that the trial

Court had not obtained the Commissioner's report. Therefore, the trial Court obtained a Commissioner's report. The TILR was appointed as a Commissioner and he submitted a report along with map at Exhibit 33. This report was prepared after issuing due notice to the petitioner and by taking measurement at the site in question. In fact, the measurement was carried out in the presence of all the parties. It is on this basis that the Appellate Court has refused to vacate the injunction granted by the trial Court.

3. Having heard the learned Counsel for the petitioner, I am of view that there is no error of law committed by the appellate Court in dismissing the petitioner's appeal. The dismissal is based on cogent and reliable material such as the Commissioner's report drawn in the presence of both the parties. There is no merit in the writ petition, which is hereby dismissed.

Sd/-

S. A. BOBDE, J.